



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/172315

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services (Department) in regard to Medical Assistance, a hearing was held on March 29, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether a prior authorization request meets the standards necessary for Medicaid payment for gynecomastia surgery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], MD

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization request seeking Medicaid payment for gynecomastia (removal of breast tissue) was filed on behalf of Petitioner on or about January 28, 2016.
3. Petitioner is 14 years of age (DOB [REDACTED]). He resides in the community with his family.

4. This prior authorization request was denied by the Department because Petitioner does not meet the criteria necessary for Medicaid payment.

DISCUSSION

The Department of Health Services may only reimburse providers for medically necessary and appropriate health care services and equipment listed in *Wis. Stat. §§ 49.46(2) and 49.47(6)(a)*, as implemented by *Wis. Admin. Code, Ch. DHS 107*. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. *See, generally, Wis. Admin. Code, Chapter DHS §107.*

When determining whether to approve any prior authorization, the Division of Health Care Access and Accountability (DHCAA) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term ‘medical necessity’. It is a service that:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is Petitioner's burden to demonstrate that s/he qualified for the requested speech and language services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. Finally, a provider is responsible for submitting current and accurate information with a prior authorization request. *Wis. Admin. Code, §DHS 106.02(9)(e)1*.

In addition to the standards noted above that apply to all medical goods and services; the Department has authority to establish additional criteria to assure the expenditure of Medicaid funds meets those general standards. It has done so with respect to gynecomastia surgery:

Effective for dates of service on and after April 1, 2016, PA requests for gynecomastia surgery must include **one** of the following:

- Documentation that the member has a diagnosis of Klinefelter's syndrome
- Documentation that the member is 18 years of age or older, has completed puberty, and meets **all** of the following criteria:

- ✓ Gynecomastia has persisted for at least one year after puberty and is documented in the physician progress notes.
- ✓ The member has persistent breast pain and tenderness.
- ✓ Glandular breast tissue confirming true gynecomastia is documented on physical exam and/or mammography.
- ✓ The member has been evaluated and other hormonal causes of gynecomastia have been excluded by appropriate laboratory testing (TSH, estradiol, prolactin, testosterone, and/or luteinizing hormone).
- ✓ The symptoms have not resolved after discontinuing for at least one year any drugs that may result in gynecomastia.
- ✓ The gynecomastia persists despite treatment of other conditions that may result in gynecomastia.
- ✓ Gynecomastia is classified as Grade II, III, or IV per the American Society of Plastic Surgeons' classification.*

Found online at <https://www.forwardhealth.wi.gov/kw/pdf/2016-08.pdf>

Petitioner was represented by his mother. She testified that Petitioner is bullied in school to the point that she may have to home school him. Gym classes are particularly difficult. Further, she stated that he is in pain at all times. While I in no way diminish the emotional burden and pain experience by Petitioner, I cannot approve the request. It appears that Petitioner meets most of the above criteria but the problem for Petitioner here is age; Petitioner is 14 and the Medicaid program will not provide payment if a person is under age 18. The Division does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions and policy directives not in conflict with those laws. That is to say the Division of Hearings and Appeals does not disregard the provisions cited above.

CONCLUSIONS OF LAW

That the prior authorization involved here – for Medicaid payment for gynecomastia surgery – does not meet the criteria necessary for Medicaid payment.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of May, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 11, 2016.

Division of Health Care Access and Accountability